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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.            | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------------|------------------|
| 10/814,439   | 03/31/2004  | Danny L. Marsh       | 128625-1000                    | 5469             |
| 22879  | 7590        | 03/21/2005           |                                |                  |
| HEWLETT PACKARD COMPANY<br>P O BOX 272400, 3404 E. HARMONY ROAD<br>INTELLECTUAL PROPERTY ADMINISTRATION<br>FORT COLLINS, CO 80527-2400 |             |                      | EXAMINER<br>MARCANTONI, PAUL D |                  |
|  |             |                      | ART UNIT                       | PAPER NUMBER     |
|  |             |                      | 1755                           |                  |

DATE MAILED: 03/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                     |  |
|------------------------------|--------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/814,439 | <b>Applicant(s)</b><br>MARSH ET AL. |  |
|                              | <b>Examiner</b><br>Paul Marcantoni   | <b>Art Unit</b><br>1755             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 19-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-18, drawn to a composition for a landfill cover, classified in class 106, subclass 772.
  - II. Claims 19-24, drawn to a process for covering a landfill, classified in class 405, subclass 129.9.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product could be used to for hydroseeding or to cover a pile of mine waste, for example.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation between John Kreck of the PTO and applicants' counsel, Michael Martin, on 3/8/05, a provisional election was made with traverse to prosecute the invention of group I, claims 1-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-24 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-18 are rejected under 35 U.S.C. 102(a,b, and e) as anticipated by Chao et al. '174, Kittle '373, West et al. '181, Girg et al. '215, Jobbins '388 B1, Nachtman et al. '830 or '500 or '373 or '364, Colegrove et al. (EP 537999), Jeszenszky et al. (WO 9964368), or Trieu (CA 2184047),

Chao et al. teach a composition comprising cement (hardener), polymer, clay thickener and for use as a landcover (see claims, in particular, claim 21, col.6) thus anticipating the instant invention.

Kittle '373 teach a composition for landfilling comprising coagulation aids (hardener-col.5, lines 60—65), latex (which "hardens" to form a film and is also polymer) and other polymers thus anticipating the instant invention.

West et al. '181 teach a composition comprising guar gum, cellulose, gel agent (hardener), and polymer for use as landfill cover thus anticipating the instant invention.

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Girg et al. '215 teach a composition comprising plaster, guar gum, and polymer thus anticipating the instant invention and even teach it for landfill cover (col.1, lines 67-68).

Jobbins '388 B1 teach a composition comprising gypsum (hardener), latex polymer which can be a thickener/emulsifier, and thickener (col.3, line 49) thus anticipating the instant invention.

Nachtman et al. patents also teach a composition comprising gypsum hardener and other components which match the applicants instantly claimed invention thus anticipating it (see claims).

Colegrove et al. (EP '999) teach a composition for landfill cover comprising gum, polymer, and calcium sulfate thus anticipating the instant invention (see abstract).

Jeszensky et al. teach a composition comprising guar gum, acrylate polymer, and gypsum thus anticipating the instant invention (see abstract).

Trie (CA '047 teach a landfill cover composition comprising calcium sulfate hardener, guar gum, and cellulose polymer thus anticipating the instant invention.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chao et al. '174, Kittle '373, West et al. '181, Girg et al. '215, Jobbins '388 B1, Nachtman et al. '830 or '500 or '373 or '364, Colegrove et al. (EP 537999), Jeszenszky et al. (WO 9964368), or Trieu (CA 2184047) alone or in view of Kobeski et al. '862.

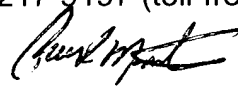
The primary references all teach the same components in overlapping amounts thus anticipating the instant invention. Even if some are missing a teaching of the addition of a filler, the addition of a filler such as wood fiber to a landfill cover composition would have been old in the art and an obvious design choice for one of ordinary skill in the art because wood/paper fiber aids or assists in the bridging of the interstices between particles (see col.5, lines 35-40).

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

The terms "super" absorbent polymer would appear vague and indefinite. How do applicants define super absorbent versus simply absorbent in claim 1.

The terms selected from "a" group should be amended to the proper Markusch language of selected from —the—group in claims 5, 12, and 15.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Paul Marcantoni  
Primary Examiner  
Art Unit 1755